

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARCY J. SCHNEIDER,	)	4:07CV3016
	)	
Plaintiff,	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
MICHAEL CHERTOFF,	)	
SECRETARY OF UNITED STATES	)	
DEPARTMENT OF HOMELAND	)	
SECURITY, in his official capacity,	)	
	)	
Defendant.	)	

The plaintiff has filed a motion to set aside the judgment entered in this matter on August 31, 2007, or for a new trial. I construe the motion as filed pursuant to Rules 59 and 60(b)(1) and (6) of the Federal Rules of Civil Procedure.

The plaintiff argues that summary judgment should not have been entered before she was permitted to conduct discovery. This argument comes too late. If the plaintiff needed to conduct discovery in order to oppose the motion for summary judgment, she should have filed a motion under Rule 56(f) of the Federal Rules of Civil Procedure to request a continuance or the denial of the motion for summary judgment. She did not file such a motion. To the contrary, the plaintiff joined the defendant in filing a motion to suspend progression of the case, and thereby postpone discovery, until the summary judgment motion was decided.<sup>1</sup>

Accordingly,

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<sup>1</sup> This joint motion was filed on August 17, 2007, eleven days after the defendant had raised objections to the plaintiff's evidence in his reply brief. I found that the objections were well-taken, and I refused to consider certain statements that did not qualify as affidavits.

IT IS ORDERED that the plaintiff's motion to set aside the judgment or for new trial (filing 30) is denied.

October 9, 2007.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge